

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JUSTIN LEE LONGTINE,

Plaintiff,

vs.

TIM KRUM–I.P.P.O WATCH and
GERRI BUTLER–CASE MGR WATCH,

Defendants.

CV 16-00005-H-DLC-JTJ

FINDINGS AND RECOMMENDATIONS
OF UNITED STATES MAGISTRATE
JUDGE

On February 19, 2016, this Court issued an Order finding that Mr. Longtine’s Complaint, as currently plead, failed to state a claim upon which relief may be granted, and as such, it was subject to dismissal. As it might have been possible for Mr. Longtine to cure the defects in the Complaint by alleging additional facts, Mr. Longtine was given an opportunity to file an amended complaint on or before March 18, 2016. (Doc. 6.) He did not file an amended complaint. Therefore, for the reasons set forth in the Court’s February 19, 2016 Order (Doc. 6), this matter should be dismissed.

The Prison Litigation Reform Act prohibits prisoners from bringing forma pauperis civil actions if the prisoner has brought three or more actions in federal court that were dismissed for frivolousness, maliciousness, or failure to state a

claim. 28 U.S.C. §1915(g). Mr. Longtine failed to state a claim upon which relief may be granted. The dismissal of this case should constitute a strike under 28 U.S.C. §1915(g).

Based upon the foregoing, the Court issues the following:

RECOMMENDATIONS

1. This matter should be dismissed. The Clerk of Court should be directed to close this matter and enter judgment pursuant to Rule 58 of the Federal Rules of Civil Procedure.

2. The Clerk of Court should be directed to have the docket reflect that the Court certifies pursuant to Rule 24(a)(3)(A) of the Federal Rules of Appellate Procedure that any appeal of this decision would not be taken in good faith. The record makes plain that the Complaint filed in this case is frivolous as it lacks arguable substance in law or fact.

3. The Clerk of Court should be directed to have the docket reflect that this dismissal counts as a strike pursuant to 28 U.S.C. § 1915(g). Mr. Longtine failed to state a claim upon which relief may be granted.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Longtine may file objections to these Findings and Recommendations

within fourteen (14) days after service (mailing) hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a) should not be filed until entry of the District Court's final judgment.

DATED this 15th day of April, 2016.

/s/ John Johnston
John Johnston
United States Magistrate Judge

¹ As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.